



RE: CDE Meeting

Sanoff, Robert

to:

'Kautsky, Peter (ENRD)', Sarah Flanagan, Ettinger, Jonathan

12/07/2010 11:52 AM

Cc:

""Evans, Rachel (ENRD)""

Hide Details

From: "Sanoff, Robert" <RSS@foleyhoag.com>

To: ""Kautsky, Peter (ENRD)"" <Peter.Kautsky@usdoj.gov>, Sarah

Flanagan/R2/USEPA/US@EPA, "Ettinger, Jonathan" <JETtinger@foleyhoag.com>,

Cc: ""Evans, Rachel (ENRD)"" <Rachel.Evans2@usdoj.gov>

Peter -- I'm flattered that you've elected to attend a meeting with me in person. Should I bring a cake to celebrate?

Robby

## FOLEY HOAG LLP

### Robert Sanoff

Seaport World Trade Center West  
155 Seaport Boulevard  
Boston, Massachusetts 02210-2600

617 832 1152 phone  
617 832 7000 fax  
617 930 2848 mobile

[www.foleyhoag.com](http://www.foleyhoag.com)

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**From:** Kautsky, Peter (ENRD) [<mailto:Peter.Kautsky@usdoj.gov>]

**Sent:** Tuesday, December 07, 2010 11:26 AM

**To:** Flanagan.Sarah@epamail.epa.gov; Ettinger, Jonathan

**Cc:** Evans, Rachel (ENRD); Sanoff, Robert

**Subject:** RE: CDE Meeting

I wanted to let folks know that Rachel and I are taking the 9 a.m. shuttle. We should be at EPA by 11, but could be a few minutes late. If we are greatly delayed we will email you. Peter

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**From:** Flanagan.Sarah@epamail.epa.gov [<mailto:Flanagan.Sarah@epamail.epa.gov>]

**Sent:** Monday, December 06, 2010 4:11 PM

**To:** Ettinger, Jonathan

**Cc:** Kautsky, Peter (ENRD); Evans, Rachel (ENRD); Sanoff, Robert

**Subject:** CDE Meeting

Thanks! We're looking forward to seeing you on Thursday too. By the way, we'll be meeting on the 17th floor, in room 1721.

Sarah

From: "Ettinger, Jonathan" <JEttinger@foleyhoag.com>  
To: Sarah Flanagan/R2/USEPA/US@EPA  
Cc: "Sanoff, Robert" <RSS@foleyhoag.com>, "PKautsky@ENRD.USDOJ.GOV" <PKautsky@ENRD.USDOJ.GOV>, "Rachel.Evans2@USDOJ.GOV" <Rachel.Evans2@USDOJ.GOV>  
Date: 12/06/2010 03:03 PM  
Subject: FW: CDE Meeting

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Sarah,

Attached please find:

1. [Notice of Motion of Cornell-Dubilier Electronics, Inc. for Summary Judgment Against the London Market Insurers with Respect to the Exxon Policies](#)
  2. [Memorandum of Cornell-Dubilier Electronics, Inc. in Support of Its Summary Judgment Motion Against The London Market Insurers with Respect to the Exxon Policies](#)
  3. [Intervenor Exxon Mobil Corporation's Memorandum of Law in Opposition to Cornell-Dubilier Electronics, Inc.'s Motion for Summary Judgment Against the London Market Insurers with Respect to the Exxon Policies](#)
  4. [Reply Memorandum of Cornell-Dubilier Electronics, Inc. in Support of its Summary Judgment Motion Against the London Market Insurers with Respect to the Exxon Policies](#)
  5. [Exxon Mobil Corporation's Supplemental Brief in Further Support of its Opposition to Cornell-Dubilier Electronics, Inc.'s Motion for Summary Judgment with Respect to the Exxon Policies](#)
  6. [Supplemental Memorandum of Cornell-Dubilier Electronics, Inc. in Support of its Summary Judgment Motion against the London Market Insurers with Respect to the Exxon Policies](#)
  7. [Exxon Mobil Corporation's Supplemental Reply Brief in Further Support of Its Opposition to Cornell-Dubilier Electronics, Inc.'s Motion for Summary Judgment with Respect to the Exxon Policies](#)
  8. [Supplemental Reply of Cornell-Dubilier Electronics, Inc. in Support of its Summary Judgment Motion Against the London Market Insurers with Respect to the Exxon Policies](#)
  9. Order denying Cornell-Dubilier, Inc.'s Motion for Summary Judgment, dated October 21, 2010
- We look forward to seeing you Thursday.

**FOLEY  
HOAG** LLP

Jonathan M. Ettinger | Partner

Seaport West  
155 Seaport Boulevard  
Boston, Massachusetts 02210-2600

617 832 1195 phone

617 832 7000 fax  
617 947 4850 mobile

[www.foleyhoag.com](http://www.foleyhoag.com)

Read the Law and the Environment blog at [lawandenvironment.com](http://lawandenvironment.com).

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**From:** Flanagan.Sarah@epamail.epa.gov [<mailto:Flanagan.Sarah@epamail.epa.gov>]  
**Sent:** Friday, December 03, 2010 3:13 PM  
**To:** Sanoff, Robert  
**Cc:** Ettinger, Jonathan; PKautsky@ENRD.USDOJ.GOV; Rachel.Evans2@USDOJ.GOV  
**Subject:** CDE Meeting

Robby,

Since you've raised the issue of the **Ex. 7(A) - Int with enf.**, as part of our confidential settlement discussions, we would like you to bring along the settlement between CDE and **Ex. 7(A) - Int with enf.** and/or be prepared to discuss the terms of the settlement.

Also, we would like to take a look at the summary judgment motion to establish coverage under the Exxon policies (CDE's motion, Exxon's response, and the court's ruling). Could you provide those documents for us in advance of our meeting on December 9?

Thanks.

-Sarah

Sarah P. Flanagan  
Office of Regional Counsel, NJ Superfund Branch  
USEPA, Region 2  
290 Broadway, 17th Floor  
New York, NY 10007  
Tel: 212-637-3136  
Fax: 212-637-3096

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From: "Sanoff, Robert" <RSS@foleyhoag.com>  
To: Sarah Flanagan/R2/USEPA/US@EPA  
Cc: "Ettinger, Jonathan" <JETtinger@foleyhoag.com>  
Date: 11/24/2010 10:47 AM  
Subject: RE: CDE

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Sarah -- It doesn't look like CDE will be in a position to release preliminary financials, but I'm told that the auditors are still projecting the end of December for the release of the final 2010 financials. I'm also told that CDE had a better year in 2010 than 2009. We think we will still have plenty to discuss on December 9th even without

those preliminary financials.

Best wishes on the holiday.  
Robby

**FOLEY  
HOAG** LLP

**Robert Sanoff**

Seaport World Trade Center West  
155 Seaport Boulevard  
Boston, Massachusetts 02210-2600

617 832 1152 phone  
617 832 7000 fax  
617 930 2848 mobile

[www.foleyhoag.com](http://www.foleyhoag.com)

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**From:** Flanagan.Sarah@epamail.epa.gov [<mailto:Flanagan.Sarah@epamail.epa.gov>]  
**Sent:** Tuesday, November 23, 2010 12:39 PM  
**To:** Sanoff, Robert  
**Subject:** RE: CDE

Great! Thank you.

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From: "Sanoff, Robert" <RSS@foleyhoag.com>  
To: Sarah Flanagan/R2/USEPA/US@EPA  
Cc: "Ettinger, Jonathan" <JETtinger@foleyhoag.com>  
Date: 11/23/2010 12:38 PM  
Subject: RE: CDE

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I got a cryptic email from my client suggesting that I will have something to send to you by the end of the day. If I get anything, I will forward it.

Robby

**FOLEY  
HOAG** LLP

**Robert Sanoff**

Seaport World Trade Center West  
155 Seaport Boulevard  
Boston, Massachusetts 02210-2600

617 832 1152 phone  
617 832 7000 fax  
617 930 2848 mobile

[www.foleyhoag.com](http://www.foleyhoag.com)

---

**From:** Flanagan.Sarah@epamail.epa.gov [<mailto:Flanagan.Sarah@epamail.epa.gov>]  
**Sent:** Monday, November 22, 2010 6:06 PM  
**To:** Sanoff, Robert  
**Cc:** Ettinger, Jonathan  
**Subject:** RE: CDE

Robby,

Before I tell our financial analyst to go ahead, I thought I would check to see if there was any word on FY 2010.

Thanks

-Sarah

Sarah P. Flanagan  
Office of Regional Counsel, NJ Superfund Branch  
USEPA, Region 2  
290 Broadway, 17th Floor  
New York, NY 10007  
Tel: 212-637-3136  
Fax: 212-637-3096

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From: "Sanoff, Robert" <RSS@foleyhoag.com>  
To: Sarah Flanagan/R2/USEPA/US@EPA  
Cc: "Ettinger, Jonathan" <JME@foleyhoag.com>  
Date: 11/17/2010 12:24 PM  
Subject: RE: CDE

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Sarah -- CDE's audited financials were not prepared last year until March, but they are hoping to have completed financials for fy 2010 by the end of December. CDE is checking to see if there is a balance sheet and income statement which is in good enough shape to give you now (although it will not have any of the footnotes). I'll let you know when I hear. One other issue which would be worth your confirming into before our meeting is that the State of NJ would be participating in any South Plainfield (and potentially Ex. 7(A) - Int with enf. settlement. Thanks.

Robby

**FOLEY  
HOAG** LLP

Robert Sanoff

Seaport World Trade Center West  
155 Seaport Boulevard

Boston, Massachusetts 02210-2600

617 832 1152 phone  
617 832 7000 fax  
617 930 2848 mobile

[www.foleyhoag.com](http://www.foleyhoag.com)

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**From:** Flanagan.Sarah@epamail.epa.gov [<mailto:Flanagan.Sarah@epamail.epa.gov>]  
**Sent:** Tuesday, November 16, 2010 7:05 PM  
**To:** Sanoff, Robert  
**Subject:** Re: CDE

Thanks Robby. We would like to update our analysis for the meeting on 12/9/10. If CDE doesn't have unaudited financial statements for the full year ending 8/31/10, partial would be better than nothing. However, if unaudited information for the year ending 8/31/10 will be available soon, we would hold off a bit before we begin the updating process.

Regards,

-Sarah

Sarah P. Flanagan  
Office of Regional Counsel, NJ Superfund Branch  
USEPA, Region 2  
290 Broadway, 17th Floor  
New York, NY 10007  
Tel: 212-637-3136  
Fax: 212-637-3096

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From: "Sanoff, Robert" <RSS@foleyhoag.com>  
To: Sarah Flanagan/R2/USEPA/US@EPA  
Date: 11/15/2010 04:46 PM  
Subject: Re: CDE

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Sarah -- I'll check again but I thought I did ask my client for unaudited 2010 financials and was told there were none yet available.

Best regards,  
Robby

-----  
Robert S. Sanoff  
Foley Hoag LLP -- 155 Seaport Blvd  
Boston, MA 02210  
(t) 617 832-1152 -- (c) 617 930-2848

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**From:** Flanagan.Sarah@epamail.epa.gov  
**To:** Sanoff, Robert  
**Cc:** Ettinger, Jonathan



**Sent:** Mon Nov 15 16:39:08 2010

**Subject:** Re: CDE

Robby,

Thank you. We will think about what you've said with regard to the

Ex. 7(A) - Int with enf.

**Ex. 7(A) - Int with enf.**

I would like to point out that our November 4, 2010 letter included a third request, in addition to the two requests to which CDE has responded. I think the second and third requests were muddled because we failed to number the third request. The second request was for audited financial statements for the fiscal year ending on August 31, 2009. Our third request was meant to address the fiscal year ending on August 31, 2010, for which we seek unaudited financial data including income statements, balance sheets, and statements of cash flow. (We are assuming that audited financials are not available yet for the FY ending August 31, 2010.)

I apologize for the confusing wording of the letter. Could you please enquire into what unaudited financial information CDE could provide (on a confidential basis)?

Thank you.

Sarah P. Flanagan  
Office of Regional Counsel, NJ Superfund Branch  
USEPA, Region 2  
290 Broadway, 17th Floor  
New York, NY 10007  
Tel: 212-637-3136  
Fax: 212-637-3096

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From: "Sanoff, Robert" <RSS@foleyhoag.com>  
To: Sarah Flanagan/R2/USEPA/US@EPA  
Cc: "Ettinger, Jonathan" <JME@foleyhoag.com>  
Date: 11/15/2010 04:27 PM  
Subject:

**Confidential -- For Settlement Purposes Only**

Sarah -- I attach CDE's response to your request for updated financial information (which includes on a confidential basis copies of CDE's 2009 audited financial statement and federal tax return).

In thinking further about our recent settlement conversation, it seems clear to me that any settlement to be viable will need directly or indirectly to address the Ex. 7(A) - Int with enf. (and other sites). It would be helpful if you could reach out to the Ex. 7(A) - Int with enf. team at EPA in advance of our December 9th meeting to get their views on whether we could fold that Site into any settlement. Thanks.

If you have any questions about this email or attachment, please don't hesitate to call Jon Ettinger or me.

Best regards,

Robby Sanoff

**FOLEY  
HOAG** LLP

Robert Sanoff

Seaport World Trade Center West  
155 Seaport Boulevard  
Boston, Massachusetts 02210-2600

617 832 1152 phone  
617 832 7000 fax  
617 930 2848 mobile

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[attachment "Scan\_Attachment1.PDF" deleted by Sarah Flanagan/R2/USEPA/US]

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